

Ethics Laws for Local Government Officials: Indiana Code Title 35-44.1-1

Presented by **Dustin Meeks**





Agenda

- The Ethics Crimes of IC 35-44.1-1
 - Definitions
 - Mental States
 - Official Misconduct
 - Bribery
 - Ghost Employment
 - Conflict of Interest
 - Profiteering from Public Service



Indiana Code 35-44.1-1 - Definitions

- Public Servant
 - A person who is:
 - Authorized to perform an official function on behalf of, and is paid by, a governmental entity
 - Elected or appointed to office to discharge a public duty for a governmental entity; OR
 - With or without compensation is appointed in writing by a public official to act in an advisory capacity to a governmental entity concerning a contract or purchase made by the entity.



Indiana Code 35-44.1-1 - Definitions

- Dependent
 - A person who is:
 - The spouse of a Public Servant
 - A child, step-child, or adoptee of a Public Servant who is unemancipated or less than eighteen years of age: OR
 - An individual who receives more than one-half of their support during a year from a Public Servant



Indiana Code 35-44.1-1 - Definitions

- Pecuniary Interest
 - An interest in a contract or purchase if the contract or purchase will result in or is intended to result in an ascertainable increase in the income or net worth of:
 - A Public Servant
 - A Dependent of the Public Servant who is under the direct or indirect administrative control of the Public Servant or who receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the Public Servant.



Indiana Code 35-41-2-2 – Mental States

- A person engages in conduct "**intentionally**" if, when he engages in the conduct, it is his conscious objective to do so.
- A person engages in conduct "**knowingly**" if, when he engages in the conduct, he is aware of a high probability that he is doing so.
- A person engages in conduct "**recklessly**" if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.



Official Misconduct – IC 35-44.1-1-1

- If a Public Servant does any of the following:
 - Commits an offense in the performance of the public servant's official duties;
 - Solicits, accepts, or agrees to accept from an appointee or employee any property other than what the public servant is authorized by law to accept as a condition of continued employment;
 - Acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of the public servant's office that official action not yet taken is contemplated; OR
 - Fails to deliver public records and property in the public servant's custody to the public servant's successor in office when that successor qualifies for office.
- Mindset: Knowingly or intentionally



Bribery – IC 35-44.1-1-2

- If a PERSON does any of the following:
 - Solicits, accepts, or agrees to accept, either before or after the person becomes appointed, elected, or qualified, any property, except property the person is authorized by law to accept with intent to control the performance of an act related to the person's employment or function **as a Public Servant**.
 - It is irrelevant whether the Public Servant received the property before or after the official action being obtained by Bribery occurs.
 - It is also irrelevant if the duty undertaken by the Public Servant for which the Public Servant received property was a preexisting public duty for which the Public Servant had no discretion.
- Mindset: Intentionally



Bribery – IC 35-44.1-1-2

- ***An individual*** who confers, offers, or agrees to confer on a Public Servant either before or after the Public Servant becomes appointed, elected, or qualified any property, except property the public servant is authorized by law to accept, with intent to control the performance of any act related to the employment of the Public Servant or because of any official act performed by the Public Servant.
- Mindset: Intentionally



Ghost Employment – IC 35-44.1-1-3

- If a **Public Servant** does any of the following:
 - Hires an employee for the government entity that the Public Servant serves and fails to assign the employee any duties;
 - Hires an employee for the government entity that the Public Servant serves and assigns any duties not related to the operation of the governmental entity;
 - Assigns an employee under the Public Servant's supervision any duties not related to the operation of the governmental entity.
- Mindset: Knowingly or intentionally



Ghost Employment – IC 35-44.1-1-3

- An **employee of a governmental entity** who
 - Accepts property from the governmental entity (gets paid) knowing that the person has not been assigned any duties to perform for the governmental entity; OR
 - Knowingly or intentionally accepts property for the performance of duties not related to the operation of the governmental entity.
- Mindset: Knowingly or intentionally



When is a Ghost Not a Ghost?

- A person employed by a governmental entity is considered to be performing duties related to the operations of the governmental entity if the duties are:
 - Undertaken with the approval of the employee's supervisor;
 - In compliance with a written policy or regulation issued by the executive officer of the entity containing a limitation on the amount of time during the calendar year that the employee may spend performing services during normal hours of employment; AND
 - The services are being performed on a voluntary basis for the benefit of another governmental entity or a 501(c)(3) non-profit organization that do not:
 - Promote religion
 - Attempt to influence legislation or governmental policy
 - Attempt to influence elections public office



Conflict of Interest – IC 35-44.1-1-4

- If a Public Servant does any of the following:
 - Has a pecuniary interest in or derives profit from a contract or purchase connected to an action by the governmental entity served by the Public Servant.
- Mindset: Knowingly or intentionally



Conflict of Interest – IC 35-44.1-1-4

- HOWEVER, the following are NOT Conflict of Interest:
 - When a Public Servant or their Dependent receive compensation through salary or an employment contract for services provided or for expenses incurred as provided by law.
 - When a Public Servant's interest in the contract or purchase and all other contracts or purchases made by the governmental entity in a 12-month period preceding the contract date have a total value of less than \$250.00.
 - When the contract or purchase is for utility services from a utility with a rate structure regulated by the State or Federal government



Conflict of Interest – Disclosure!

- Certain Public Servants (including elected officials) may make a disclosure of a potential Conflict of Interest that meets ALL of the below criteria, if such a disclosure is made the Public Servant has not committed Conflict of Interest:
 - 1. The disclosure must be in writing and affirmed under penalty of perjury;
 - 2. The disclosure must contain a description of the contract or purchase to be made by the governmental entity and the Public Servant (or Dependent's) Pecuniary Interest in the Contract or Purchase;
 - 3. The disclosure must be submitted to the governmental entity and accepted by its governing body in a public meeting before final action is taken on the contract or purchase; AND
 - 4. The disclosure must be filed within fifteen days after final action on the contract or purchase with:
 - The Indiana State Board of Accounts
 - The Clerk of the Circuit Court in the County where the governmental entity takes final action on the contract or purchase.



Profiteering From Public Service – IC 35-44.1-1-5

- If a Public Servant does any of the following:
 - Obtains a pecuniary interest in a contract or purchase with a governmental entity within one year of separation from employment or service for with the governmental entity.
 - Must no longer be a Public Servant for the governmental entity BUT during time as a Public Servant approved, negotiated, or prepared on behalf of the governmental entity the terms or specifications of the contract or purchase
 - Mindset: Knowingly or intentionally



Profiteering From Public Service – IC 35-44.1-1-5

- HOWEVER, the following is NOT Profiteering:
 - If the following is true of the contract, purchase, or matter involved in the supposed profiteering from public service, the person has not committed the crime of profiteering:
 - The matter is a negotiation or other activity related to an economic development grant, loan, or loan guarantee
 - The total amount of benefit to the person was less than \$250.00 of profit from the contract or purchase.



Defending a Charge of Profiteering

- A person can defend themselves from a charge of profiteering by showing:
 - 1. the person was screened from participating in the contract or purchase;
 - 2. the person has not received a part of the profits of the contract or purchase; **AND**
 - 3. a notice was given promptly to the governmental entity of the persons interest in the contract or purchase.



Criminal Penalties

- **Official Misconduct:**
 - Level 6 Felony (imprisonment of 6 to 30 months and fines up to \$10,000)
- **Bribery:**
 - Level 5 Felony (imprisonment of 12 to 72 months and fines of up to \$10,000)
- **Ghost Employment:**
 - Level 6 Felony (imprisonment of 6 to 30 months and fines up to \$10,000)
 - May be reduced to a Class A Misdemeanor by sentencing court
 - Comes with joint and several liability of Public Servant and employee to repay the governmental entity
- **Conflict of Interest:**
 - Level 6 Felony (imprisonment of 6 to 30 months and fines up to \$10,000)
 - May be reduced to a Class A Misdemeanor by sentencing court
- **Profiteering from Public Service:**
 - Level 6 Felony (imprisonment of 6 to 30 months and fines up to \$10,000)
 - May be reduced to a Class A Misdemeanor by sentencing court

Quiz Time!



THANK YOU

Dustin Meeks

Associate

Dustin.Meeks@btlaw.com

